have their domicil. *Long* v. *Commissioners*, 2 Knapp P. C. 51; *The Queen* v. *Arnaud*, 16 L. J. N. S. 50. Since the civil law societies, or so-called partnerships, are as much juridical persons as are English or American corporations, this rule was properly applied by the commission to a *société en commandite*. 2 Calvo, Droit International, 227, § 737; *Liverpool, etc., Co.* v. *Agar et al.*, 14 Fed. Rep. 615. The dissenting opinion of the Commissioner for the United States is based upon the erroneous conception that the civil law recognizes a distinction between business organizations similar to the common law distinction between corporations and partnerships. Ordinarily a government will not intervene on behalf of its citizens for injuries to a foreign corporation in which they are interested, upon the ground that such corporations are citizens of the country where created. U. S. Foreign Affairs, 1866, part iii. 522, 525. It is argued in the dissenting opinion that the application of this rule to civil law commercial societies, as in the principal case, gives unequal privileges to foreigners who form partnerships in the United States or England, and persons forming such a society as Alsop and Company in other countries. But this objection has no weight, since those who desire to carry on business in a foreign country where the civil law prevails can do so through partnerships or corporations formed in their native country. If business men desire to form companies in foreign countries they must accept the disadvantages as well as the benefits necessarily resulting. They do not become denationalized, but they choose to act through a foreign citizen. Furthermore, in such cases a citizen does not entirely lose the protection of his own government. *Le More* v. *U. S.*, 4 Moore International Arbitrations 3311.

The decision in the principal case is also of interest in connection with an anomalous rule applied by the federal courts. It is held, in an action by or against a corporation, where jurisdiction depends upon the citizenship of the parties, that the real parties are the stockholders, and that they are "conclusively presumed" to be citizens of the state or country in which the corporation was created. *Steamship Co.* v. *Tugman*, 106 U. S. 118. This legal fiction reaches a result identical with that of the principal case; but the rule of this case, that the corporation is the real party, and for purposes of jurisdiction is a citizen of the state or country where created, seems more logical, and is not without the support of authority. *Bank* v. *Devreau*, 5 Cranch 62, 89 (*semble*); *Louisville R. R. Co.* v. *Letson*, 2 How. 497.

Scope of the Remedy of Interpleader. — The equitable remedy by bill of interpleader seems always to have been regarded by the courts with peculiar jealousy and surrounded by unfortunate and unnecessary restrictions. This tendency is illustrated by a recent decision under a statute allowing interpleader by motion, the statute being, as is usual in such cases, construed as not extending the scope of the equitable remedy, but only introducing it under different procedure into courts of law. A purchaser, who was sued for the contract price of chattels sold and delivered to him, was denied the right to interplead his vendor and one Coleman, who claimed to be the owner of the chattels, which he alleged had been converted by the vendor. *Coleman* v. *Chambers*, 29 So. Rep. 58 (Ala.). One ground of the decision was that the adverse claims were not for the

same thing, that of the vendor being for the contract price, and that of Coleman for damages for conversion by the vendee. This objection would of course be final if the facts supported it. But it distinctly appears that Coleman claimed the contract price, and the inquiry should have been whether he showed any basis for such a claim. It would seem that one whose goods have been converted and sold in exchange for a contract obligation on the part of the vendee might by bill in equity enforce a constructive trust of that obligation, and thus claim the price from the vendee, if for any reason the legal remedy was inadequate. There are a few decisions involving the same principle in which the equitable remedy was allowed. *American Sugar, etc., Co.* v. *Faucher*, 145 N. Y. 552. *Cf. Kaufman* v. *Wiene*, 169 Ill. 596. Judging from the language of previous Alabama cases, and the nature of modern practice, the fact that the claim was equitable would be no objection to its introduction under the statutory interpleader, though there seems to be no conclusive authority on the question.

In this view of the case another question might arise. It has been repeatedly laid down as law in cases and text-books that a bailee, agent, tenant, or vendee cannot maintain a bill of interpleader against his bailor, principal, landlord, or vendor, and a third person claiming by independent or paramount title. Just what is meant by independent title is not entirely clear. As the rule is sometimes stated it seems to be based on the notion of a confidential or personal relation between the stakeholder and one claimant, which forbids the stakeholder to question the original right of that claimant, although it allows him to interplead the latter and a third person who claims to have acquired such original right by assignment, attachment, or other method, since its origin. 3 Pomeroy, Eq. Jurisp., 2d ed., § 1327. The language of the courts which adopt this view, however, is broader than most of the decisions require, and other cases apparently rest the rule on a less artificial foundation, namely, the requirement that both claimants shall demand not only the same thing, but by virtue of the same debt or duty. It is said, for example, that a bailee's duty to his bailor and to a third person who claims the chattel merely as owner, are essentially different obligations. *Crawshay* v. *Thornton*, 2 Myl. & Cr. 1. This gives the rule a logical basis, and explains most of the decisions; but even in this form the rule introduces a needless restriction, which the framers of the English Common Law Procedure Act took pains to eliminate from the statutory interpleader, and apart from statute the soundness of the decision in *Crawshay* v. *Thornton* has been doubted both in England and in this country. *Attenborough* v. *London, etc., Co.*, L. R. 3 C. P. D. 450, 456, 458; *Crane* v. *McDonald*, 118 N. Y. 648, 656. The case has been generally followed, but often with reluctance, and a few decisions apparently reject its principle altogether. *First Nat. Bank, etc.*, v. *Bininger*, 26 N. J. Eq. 345; *Child* v. *Mann*, L. R. 3 Eq. 806. But accepting the principle of *Crawshay* v. *Thornton* as law, it would nevertheless follow that one who does not deny the validity of the obligation between the stakeholder and his principal or vendor, but attempts to secure to himself the benefit of that obligation on the theory of a constructive trust, claims, as against the stakeholder, by virtue of the same debt or duty, and not by independent title. A bill of interpleader has been allowed in such a case. *Goddard* v. *Leech*, Wright (Ohio) 476. In another case of the same sort the rule as to paramount title seems to have been rested on the less satisfactory ground

of the obligations imposed by a confidential relation, and the bill was dismissed. *Marvin* v. *Elwood*, 11 Paige 365. The opposite result was reached in the same state in a similar case where the trust was not constructive but express. *Richards* v. *Salter*, 6 Johns. Ch. 445. If the rule in question rests on identity of obligation it would not exclude an interpleader in the principal case. If it rests on anything else it is artificial, contradicted by a number of cases, and not likely to be generally followed.

The most troublesome objection to an interpleader in the principal case remains to be considered: the objection that if Coleman's claim was correct the vendee was a tort-feasor. It has been held in several cases that where one of the adverse claims is based on the commission of a tort by the stakeholder, the interpleader cannot be allowed. *Shaw* v. *Coster*, 8 Paige 339; *Hatfield* v. *McWhorter*, 40 Ga. 269. The refusal to deliver a chattel to either of two claimants, simply on the ground of the conflicting claims, followed at once by proceedings to make the claimants interplead, though involving a technical conversion, is not of course within the rule. But beyond that no distinction is made between intentional and unintentional torts. It is obviously just to refuse to a wilful wrongdoer the protection of a bill of interpleader, but where the stakeholder has acted conscientiously throughout and in perfect good faith, and now asks only to be allowed to determine in the surest manner which claimant is entitled, the rule which denies him such relief on the ground of a technical tort seems altogether inequitable. Unfortunately, however, there seems to be no authority on the other side, and the Alabama court was amply justified in following the established rule.

Impossibility of performing Contracts as a Defence. — Impossibility was originally regarded as in no case an excuse for the non-performance of a contract. To this general rule three well-recognized exceptions have arisen. A defence is admitted where, without fault of either of the contracting parties, performance has been prevented by the destruction of the subject-matter of the contract, by a new law forbidding the act promised, or by the sickness or death of one of the parties to a contract for personal services. Further exceptions the English and most of the American courts have not allowed. *Ashmore* v. *Cox*, [1899] 1 Q. B. 436. The New York court, however, has of late been more liberal, and in a somewhat indefinite way has laid down the doctrine that impossibility is an excuse when caused by the non-continuance either of the subject-matter of the contract or of the conditions essential to its performance. *Stewart* v. *Stone*, 127 N. Y. 500; *Dolan* v. *Rodgers*, 149 N. Y. 489; *Herter* v. *Mullen*, 159 N. Y. 28. In line with this rule is a recent decision of the same court. *Buffalo, etc., Land Co.* v. *Bellevue Land, etc., Co.*, 165 N. Y. 247; 59 N. E. Rep. 5. On selling certain land to the plaintiffs, the defendants contracted to build an electric railroad near by, on which they would run cars as often as every half hour, and they further agreed that in case this promise were broken, they would buy back the land. The plaintiffs requested that the defendants be compelled to fulfill this last promise, they not having run cars according to agreement. The court held the defendants' plea, that extraordinary snowstorms had compelled them to suspend operations for a time, was a good defence, on